



DEPARTMENT OF BUILDING AND DEVELOPMENT
DEPARTMENT OF PLANNING
STAFF REPORT

PLANNING COMMISSION PUBLIC HEARING

DATE OF HEARING: January 28, 2010

CPAM-2009-0002, Chesapeake Bay Preservation Act Policies;

ZOAM 2009-0004, Amendments to the Revised 1993 Loudoun County Zoning Ordinance Necessary to Implement the Chesapeake Bay Preservation Ordinance;

DOAM 2009-0004, Amendments to the Facilities Standards Manual Necessary to Implement the Chesapeake Bay Preservation Ordinance;

DECISION DEADLINE: At the Pleasure of the Board

ELECTION DISTRICT: Countywide

PROJECT PLANNERS: Laura Edmonds, Joe Gorney

EXECUTIVE SUMMARY:

At its December 15, 2009, Business Meeting the Board of Supervisors ("Board") adopted a Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance ("Zoning Ordinance"), Facilities Standards Manual ("FSM"), Codified Ordinances of Loudoun County ("Codified Ordinances"), and Comprehensive Plan in order to establish new, and revise existing, regulations, standards, and policies to implement and employ certain portions of the Chesapeake Bay Preservation Area Designation and Management Regulations ("Chesapeake Bay Regulations"), and other criteria, promulgated pursuant to the Chesapeake Bay Preservation Act ("Bay Act"), to include a Chesapeake Bay Preservation Area Map ("Map") delineating the Chesapeake Bay Preservation Area ("CBPA").

The resulting proposed Chesapeake Bay Preservation Ordinance ("CBPO"), would be included as a new Chapter of the Codified Ordinances, would delineate a CBPA that comprises a Resource Protection Area ("RPA") and a Resource Management Area ("RMA"), and would establish new standards and performance criteria to apply within the CBPA. The RPA would include areas that have an intrinsic water quality value due to the ecological and biological processes they perform and are sensitive to impacts which may cause water quality degradation, and the RMA would include areas that have a potential for causing significant water quality degradation or for diminishing the functional value of the RPA if improperly used or developed. Other proposed amendments to the Codified Ordinances would apply to Chapters 1066, *Private Sewage*

Disposal Systems, and 1220, *Erosion Control*, and would be necessary to maintain consistency with the proposed CBPO. Although the proposed amendments to the Codified Ordinances are not technically subject to Planning Commission review, copies have been provided for informational purposes and may be subject to public comment at the Public Hearing.

The proposed text amendments were included in the January 12, 2010, Planning Commission Public Hearing packet and are posted on the Chesapeake Bay Webpage at www.loudoun.gov/chesapeakebay. The documents are also available at the Planning Department and Building and Development front counters at the County Government Center.

RECOMMENDATION:

Staff recommends that the Planning Commission forward the proposed amendments to the Revised General Plan, CTP, Zoning Ordinance, and FSM to a Work Session for further review. Further, because the Chesapeake Bay Preservation Act Work Program ("Work Program") approved by the Board has tentatively scheduled a Board Public Hearing in regard to all proposed amendments for April 2010, Staff recommends that the Planning Commission schedule three Work Sessions, to begin on February 11, 2010, and to subsequently be held on a biweekly basis, to review comments provided during the December 3, 2009, Stakeholder Roundtable, to review comments provided during the January 28, 2010, Planning Commission Public Hearing, and to finalize the proposed amendments to the Revised General Plan, CTP, Zoning Ordinance, and FSM for Board review.

SUGGESTED MOTIONS:

1. I move that the Planning Commission forward CPAM 2009-0002, ZOAM 2009-0004, and DOAM 2009-0004 to a Work Session to be held on February 11, 2010, for further discussion.

OR

2. I move an alternate motion.

BACKGROUND:

The Board held a Committee of the Whole meeting on December 1, 2008, to begin specific discussion about water quality protection in the County. At that meeting, the Board received a briefing from the Chesapeake Bay Local Assistance Division (“CBLAD”) of the Virginia Department of Conservation and Recreation. The CBLAD described the Chesapeake Bay Regulations, which establish the various criteria that were promulgated pursuant to the Bay Act, including the eleven Performance Criteria, and the options that Loudoun County has for adopting all, or only certain, Performance Criteria. Fairfax County staff also provided information about Fairfax County’s implementation of the Chesapeake Bay Regulations.

The Board held a subsequent Committee of the Whole meeting about water quality protection on February 17, 2009, at which staff presented information that had been requested at the previous meeting, including a comparison amongst the current regulations of the Floodplain Overlay District and Scenic Creek Valley Buffer, the regulations of the River and Stream Corridor Overlay District (adopted with the Countywide Remapping in 2003), and the regulations that would be implemented by adoption of a CBPO, including various options for designating the RPA. Staff recommended moving forward with a CBPO that would incorporate Option 1, in which the RPA would consist of wetlands connected and contiguous to perennial water bodies and a 100-foot buffer adjacent to and landward of perennial water bodies and connected wetlands. Staff further recommended the adoption of a jurisdiction-wide RMA and the implementation of three of the eight Performance Criteria that have not yet been implemented by Loudoun County through other ordinances. Performance Criteria regarding BMP maintenance, stormwater management, and wetland permitting are already addressed through existing County ordinances. The three recommended Performance Criteria are as follows:

- Plan of development required for development exceeding 2,500 square feet of disturbance;
- A 2,500 square-foot erosion and sediment control disturbance threshold (reduced from the County’s current threshold of 5,000 square feet for commercial, industrial, single-family attached and multi-family; and 10,000 square feet for other uses); and
- Exemption of silvicultural activities in CBPAs (both RPA and RMA) provided that such activities adhere to the water quality protection procedures prescribed by the Virginia Department of Forestry in the July 2002 edition of “Virginia’s Forestry Best Management Practices for Water Quality,” as amended.

Staff also recommended potential consideration of the following three Performance Criteria:

- Minimization of land disturbance;
- Preservation of indigenous vegetation; and
- Minimization of impervious cover.

During the meeting, Supervisor Burton requested that the Performance Criteria regarding on-site sewage system maintenance requirements also be considered to address limitations imposed by newly adopted State legislation that may restrict the ability of localities to regulate alternative sewage disposal systems.

At its February 17, 2009, Business Meeting the Board voted to 1) proceed with the RPA identified in Option 1; 2) direct Staff to prepare a Work Program for the development and enactment of proposed text amendments; 3) direct the Planning Commission to work with stakeholder groups in the development of proposed text amendments; and 4) direct Staff to coordinate with the Board and Planning Commission Leadership prior to bringing the Work Program and stakeholder outreach to the full Board for approval and final direction.

The resulting Work Program and the Stakeholder Roundtable Participant List, including 13 representatives from agricultural, urban, and environmental groups, were approved by the Board at its Business Meeting on April 7, 2009. Notably, while the completion date specified by the approved Work Program has not changed since the Board's approval, there have been some adjustments to the time line for various tasks, which were coordinated with the Board and Planning Commission Leadership.

Pursuant to the Work Program, the first Stakeholder Roundtable hosted by the Planning Commission was held on May 20, 2009. The purpose of the first Stakeholder Roundtable was to provide the participants with an overview of the Bay Act and the corresponding Chesapeake Bay Regulations that were promulgated by the Chesapeake Bay Local Assistance Board, and to receive their comments and concerns prior to drafting the proposed text amendments and associated Map.

Following the Stakeholder Roundtable, Staff drafted the proposed text amendments and Map, and distributed these items to Referral Agencies on September 30, 2009, for review and comment. Referral Agency comments were included in the January 12, 2010, Planning Commission packet. Staff also participated in five meetings with the FSM Public Review Committee ("PRC") in October, 2009, to discuss and collaborate on the proposed text amendments. Referral Agency and PRC comments were reviewed by Staff and revisions were made to the proposed text amendments and Map, where deemed appropriate.

The revised proposed text amendments and Map were then distributed to the Stakeholder Roundtable participants ("Stakeholders") on November 6, 2009, with a matrix prepared by Staff that provided Staff's responses to the comments and concerns that were expressed by the Stakeholders at the first Stakeholder Roundtable. A second Stakeholder Roundtable was held on December 3, 2009, at which Staff presented an overview of the proposed text amendments and Map, and the issues previously raised by the Stakeholders. Stakeholder and Planning Commission comments from the second Stakeholder Roundtable, and Staff's responses, are summarized in the

December 3, 2009, Stakeholder Roundtable Comment Response Matrix (Attachment 1).

At its December 15, 2009, Business Meeting the Board adopted a Resolution of Intent to Amend the Zoning Ordinance, FSM, Codified Ordinances, and Comprehensive Plan in order to establish new, and revise existing, regulations, standards, and policies to implement and employ certain portions of the Chesapeake Bay Regulations, and other criteria, promulgated pursuant to the Bay Act, to include a Map delineating the CBPA. Following the December 15, 2009, Business Meeting, Staff further revised the proposed text amendments, where appropriate, to address comments from the second Stakeholder Roundtable. The most recent drafts of the proposed text amendments were included in the January 12, 2010, Planning Commission Public Hearing packet and are posted on the Chesapeake Bay Webpage at www.loudoun.gov/chesapeakebay. The documents are also available at the Planning Department and Building and Development front counters at the County Government Center.

SUMMARY OF PROPOSED CHANGES:

The proposed text amendments are summarized as follows:

A. CPAM:

The proposed Comprehensive Plan Amendment comprises amendments to the Revised General Plan and the Countywide Transportation Plan. The proposed text amendments would revise, add, or delete certain countywide policies regarding the protection of the quality of state waters in order to implement the Bay Act, the Regulations, the Chesapeake Bay 2000 Agreement, and Executive Order 13508, Chesapeake Bay Restoration and Protection, which was signed on May 12, 2009. Executive Order 13508 calls for a renewed commitment to the protection and restoration of the Bay watershed from State and Local governments, the private sector, and residents, and defines strategies to achieve these goals.

A key aspect of the Comprehensive Plan Amendment is to revise existing policies in regard to the creation of a River and Stream Corridor Zoning Overlay District ("RSCOD") with more comprehensive Bay Act policies. Bay Act policies differ from existing RSCOD policies in a number of respects, particularly in their regulatory approach. In regard to regulatory location, RSCOD policies apply only to the actual stream corridor, which includes floodplains and other associated stream resources. Bay Act policies, however, would establish respective regulations for both an RPA, that comprises wetlands connected and contiguous to perennial water bodies and a 100-foot buffer adjacent to and landward of perennial water bodies and connected wetlands, but may not always subsume all river and stream resources such as floodplains, and a countywide RMA.

Other significant differences between Bay Act policies and existing RSCOD policies are that the former emphasizes the revegetation and management of areas along certain waterbodies, not merely the creation of a setback, more specifically defines the various individual resources within the river and stream corridors, their respective benefits to the community, and appropriate regulatory approaches, increases emphasis on watershed-based planning, education and outreach, and habitat and indigenous vegetation, and recognizes the impacts of the transportation system on water quality. Additionally, the Bay Act policies contemplate that the water quality protection functions of the RPA and RMA would be supplemented by other existing regulatory tools, such as the Floodplain Overlay District, the Scenic Creek Valley Buffer, and Steep Slope Standards.

B. ZOAM:

The proposed Zoning Ordinance Amendment is necessary to implement the proposed CBPO and includes the following:

- Section 1-103(K), *Conflicting Provisions*, revising existing text to incorporate a reference to the CBPO;
- Section 1-205, *Limitations and Methods for Measurements of Lots, Yards and Related Terms*, adding new Section 1-205(M) to establish new lot requirements for lots affected by the Resource Protection Area of the CBPO under certain circumstances;
- Section 4-1504, *Administration*, adding new Section 4-1504(C) to the Floodplain Overlay District (FOD) regulations to address conflicting provisions with the CBPO;
- Section 4-1511, *Density Calculations*, revising the FOD regulations to permit land area in any portion of the FOD to be included for purposes of calculating permitted density;
- Section 5-1000, *Scenic Creek Valley Buffer*, adding new Section 5-1006 to address conflicting provisions with the CBPO;
- Section 6-900, *Additional County, State and Federal Approvals Required for Development*, adding a reference to approvals that may be required by the CBPO in regard to conflicting provisions;
- Section 6-1001(F), *Application for Zoning Permit*, adding a reference to the CBPO and deleting an existing reference to the River and Stream Corridor Overlay District (RSCOD) in regard to Locational Clearance requirements; and
- Article VIII, *Definitions*, revising existing definitions for “Lot Area,” “Yard, Front,” “Yard, Rear,” “Yard, Required,” and “Yard, Side” for purposes of administering the requirements of the proposed CBPO, and deleting existing definitions for “Management Buffer,” “Minimum Stream Buffer,” and “Protected Corridor,” which were in regard to RSCOD; and

ZONING ORDINANCE CRITERIA FOR APPROVAL:

Section 6-1211.D of the Zoning Ordinance states “. . . for an amendment of the text of this ordinance, the Planning Commission shall consider the following matters . . .”

Standard *Whether the proposed text amendment is consistent with the Comprehensive Plan*

Analysis The Revised General Plan provides the basis for evaluating land development proposals, is the foundation for amendments to the Zoning Ordinance, and ensures that the County’s goals are implemented through the regulatory process. The policies of the Revised General Plan recognize the importance of preserving, protecting, and managing river and stream corridors through policy and regulation (Revised General Plan, Chapter 5, River and Stream Corridor Policy 3). The proposed Comprehensive Plan Amendments accompanying the proposed Zoning Ordinance Amendment clarify the role of the Bay Act in accomplishing these objectives; therefore, the proposed Zoning Ordinance Amendment is consistent with the Comprehensive Plan.

Standard *Whether the proposed text amendment is consistent with the intent and purpose of this ordinance*

Analysis The intent of the Zoning Ordinance is defined under Section 1-102, which states: *“This Ordinance is enacted in order to promote the health, safety, and welfare of the residents of Loudoun County and to implement the Loudoun County Comprehensive Plan.”* In addition, Subsections (C) and (L), respectively, state that the Zoning Ordinance is designed to *“promote, in the public interest, the best utilization of land”* and *“provide for the preservation of agricultural and forestal land and other lands for the protection of the natural environment.”* The proposed text amendments provide for the best utilization of land designated as CBPA in a manner that also protects water quality; therefore, the proposed text amendment is consistent with the purpose and intent of the Zoning Ordinance.

C. DOAM:

FSM CHAPTER 7

The proposed amendments to Chapter 7 are necessary to implement the proposed CBPO and include the following:

- Deleting existing standards in regard to Establishment of Riparian Stream Buffers and revising existing and establishing new standards in regard to Resource Protection Area Planting Plan Requirements, to include Plant Materials, Planting Density Requirements, Site Preparation, Site Stabilization, Release/Maintenance, Wildlife Damage, and Stocking Requirements;
- Revising existing Tables regarding recommended plant species;
- Establishing new Resource Protection Area Delineation Requirements, to include Perennial Flow Determination, Wetland Delineation, Buffer Area Boundary Delineation, and submission requirements, and revising existing Wetland Requirements;
- Establishing new Minor and Major Water Quality Impact Assessment Requirements; and
- Revising Environmental and Cultural Resource Existing Conditions Plat requirements to include depiction of the boundaries of the Resource Protection Area.

FSM CHAPTER 8

The proposed amendments to Chapter 8 are necessary to implement the proposed CBPO and include the following:

- Establishing new requirements for data to be contained on, and documents and items to accompany, certain land development application types, to include Preliminary Plat of Subdivision, Plats for Subdivision and Other Miscellaneous Plats, Boundary Line Adjustment, Family Subdivision, Subdivision Waiver/Low Density Waiver, AR-1 and AR-2 Division Plats, Construction Plans and Profiles, Site Plans, Plat and Plan Revisions, and Grading Permits Application;
- Revising Bonding Policies to authorize the County to require performance bonds for planting plans to be required by the proposed CBPO; and
- Establish new Bond Release Procedures in regard to notice to the Director required for planting plans.

D. Codified Ordinances: Chapter 1066, *Private Sewage Disposal Systems*; Chapter 1220, *Erosion Control*; and New Chapter, *Chesapeake Bay Preservation Ordinance*:

The proposed New Chapter would implement certain portions of the Chesapeake Bay Regulations, and other criteria, promulgated pursuant to the Bay Act. Specifically, the New Chapter would define the extent of the CBPA, including the extent of the RPA and RMA, and the standards and performance criteria that would apply within those areas. Proposed amendments to Chapter 1066 would be necessary to implement and maintain consistency with the septic pump-out and reserve drainfield requirements proposed by the New Chapter. Proposed amendments to Chapter 1220 would be necessary to implement and maintain

consistency with the reduced erosion and sediment control thresholds and the plan of development requirements proposed by the New Chapter.

KEY ISSUES:

- A. **Flexibility in adopting the Chesapeake Bay Regulations:** Several Stakeholders have inquired about the degree of flexibility available for a locality that voluntarily adopts a CBPO. Although the County has some flexibility in selecting which Chesapeake Bay Regulations to employ, any regulation selected must be adopted in its entirety in order to ensure consistency with the Bay Act and Chesapeake Bay Regulations. The Board's Intent to Amend provided direction on the desired respective extents of the RPA and RMA, and which of the 11 Performance Criteria to employ. In addition, Staff has addressed the issue of flexibility in the December 3, 2009 Stakeholder Roundtable Comment Response Matrix (Attachment 1).

Staff notes that during its February 17, 2009, Committee of the Whole Meeting, the Board also reviewed a matrix that compared the previously adopted RSCOD, which was essentially a customized local water quality protection ordinance, with the options provided by the Chesapeake Bay Regulations. The matrix compared the technical details of RSCOD and several options provided under the Chesapeake Bay Regulations, including setbacks, buffers, development standards, and permitted uses; applicability to agricultural areas; adoption time frames; staffing/administration; and costs of implementation and enforcement. Following review of the matrix, the Board directed Staff to develop the Work Program, which was subsequently approved on April 7, 2009.

- B. **Establishment of the Chesapeake Bay Review Board:** The proposed CBPO would permit certain exceptions to be granted in regard to compliance with its requirements. While the Chesapeake Bay Regulations permit some types of exceptions to be granted administratively (waivers), other types of exceptions would require the review and approval of a public or publicly-appointed body. The Chesapeake Bay Regulations provide several options in regard to which body the Board could designate to review and approve the latter type of exception. These options are as follows:
- The Board of Supervisors;
 - The Planning Commission; or
 - Any other body appointed by the Board (whether an existing or new entity).

Currently, the proposed text amendments would create a Board-appointed Chesapeake Bay Review Board to provide comprehensive, consistent review of all exception applications. However, to reduce potential costs and delay, several Stakeholders have recommended that the Board designate itself as the review entity for those exceptions that accompany legislative applications. Staff seeks additional direction from the Planning Commission regarding which body would provide the best option for such exception review.

Fairfax County has designated an Exception Review Committee composed of seven members demonstrating knowledge of and interest in environmental issues that are appointed by its Board of Supervisors for a term of four years. Article 6 of the Fairfax County Chesapeake Bay Preservation Ordinance indicates that exceptions may be granted by the Exception Review Committee or by the Board of Supervisors in conjunction with a rezoning or special exception approval.

Prince William County has designated a Chesapeake Bay Preservation Area Review Board composed of five members (and one alternate) with backgrounds in engineering and/or environmental management that are appointed by its Board of Supervisors for a term of four years. Section 32-504.18 of the Prince William County Chesapeake Bay Preservation Area Overlay District indicates that all exceptions are reviewed by the Chesapeake Bay Preservation Area Review Board.

- C. **Minimum Lot Size Reduction:** The proposed text amendments require a minimum of 40,000 square feet to be located outside of the RPA on any new residential lot. The Northern Virginia Building Industry Association recommended that this minimum threshold be reduced to 20,000 square feet; the same threshold adopted by Prince William County. The purpose of the proposed 40,000 square foot threshold is to ensure that adequate area exists outside of the RPA on a lot for the permitted residential use. Staff suggests that there may be an acceptable intermediate threshold in which lots served by public water and sewer would be required to have at least 20,000 square feet located outside of the RPA, while lots utilizing well and septic would be required to have more area located outside of the RPA (e.g., the current threshold of 40,000 square feet). Staff seeks additional input from the Planning Commission regarding the desired approach.
- D. **Reduced Drainage Area for Modified Perennial Flow Determination:** The Water Resources Technical Advisory Committee recommended reducing the drainage area maximum that would be required by proposed FSM Section 7.500.A.1.b for modified perennial flow determinations from 50 acres to 35 acres. Their principal reason for this reduction is an analysis of perennial stream data obtained in September, 2009, during the Countywide Stream Assessment that indicated that only 25 percent of streams with a drainage area less than 35 acres have a likelihood of being classified as perennial. By contrast, nearly 50 percent of streams with a drainage area of 50 acres have a likelihood of being classified as perennial. Because the purpose of a modified perennial flow determination is to minimize the burden on an applicant in cases where a stream probably would not exhibit perennial flow, the lower 35-acre threshold is more appropriate. Therefore, Staff supports the requested change and proposes that this change be reflected in the amendments forwarded to the Board.

Attachment:

- 1. December 3, 2009 Stakeholder Roundtable Comment Response Matrix